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FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 1, 2000

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrson
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael G. Marinelli
Staff Attorney

SUBJECT: Draft AO 1999-38

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for June 8, 2000.

AGENDA ITEM

For Meeting of: 6-08-00

Attachment

1 ADVISORY OPINION 1999-38

2
3 Nicholas C. Vasels
4 Law Offices
5 1601 Dove Street, Suite 200
6 Newport Beach, California 92660

DRAFT

7
8 Dear Mr. Vasels:

9
10 This refers to your letters dated May 5, and April 28, 2000, and November 17,
11 1999, on behalf of the Ken Calvert for Congress campaign committee ("the Committee"),
12 concerning the application of the Federal Election Campaign Act of 1971, as amended
13 ("the Act"), and Commission regulations to the proper reporting of several disputed debts
14 with former Committee vendors.

15 **FACTS**

16 You state that the Committee has, through several Form 3 reports filed in the past,
17 reported four specific Schedule D debts which the Committee contends it does not owe.
18 You explain that on its report of receipts and disbursements filed for the period ending
19 June 30, 1999, the Committee "charged off" the subject amounts by simply eliminating
20 the designated creditors from the Form 3 Schedule D. Subsequent to this and following
21 its review of the report, the FEC in a letter dated October 19, 1999 from Commission
22 staff, indicated that the Schedule D deletions created a discrepancy with the Form 3,
23 Schedule B in that the Schedule B did not identify any corresponding payments to the
24 creditors who no longer appeared on the Schedule D. In response, you state that the
25 Committee filed an amended Schedule D reinstating the charged off amounts. Your
26 request includes copies of the June 30, 1999, Schedule D; the Commission October 19,
27 1999 letter; and a November 2, 1999 letter from you responding to the Commission

1 staff's inquiries and transmitting the Committee's amended Schedule D. Your request
2 also includes copies of letters between the Committee and the vendors whose underlying
3 transactions with the Committee form the background of this request.

4 Although it may be currently considered in compliance by balancing the 6/30/99
5 Form 3, you state that the Committee remains confronted with the continuing obligation
6 to report the subject "debt" items when, you assert, it has no obligation to pay those items
7 at all. The Committee seeks to delete the items from future reports without having to
8 report the amounts as either paid by way of disbursements, or as contributions (cash or in-
9 kind).

10 The four debt items reinstated on the amended Schedule D are Fieldworks
11 Development (\$3,000); Pacific West Communications (\$2,915); Gangi Graphics
12 (\$2,085); and Calloway Vineyard & Winery (\$2,370). Of the four, the debt owed to
13 Calloway Vineyard, you state, was previously resolved by individual in-kind
14 contributions which the committee will reconcile with reports it will file with the
15 Commission. The other three items, which the Committee claims it does not owe, are the
16 subject of this advisory opinion request.

17 a) *Fieldworks Development*: Fieldworks Development, you explain, is the business name
18 for an individual named David Terrie who had been engaged to create certain
19 computerized mailing lists during Mr. Calvert's 1994 primary election campaign. There
20 were problems with the program Mr. Terrie created, and his subsequent invoice for
21 \$3,000 for the work performed was disputed by the Committee which refused to pay the
22 full amount and sought instead to settle the bill by compromise. During the ensuing
23 negotiations, in which you represented the Committee, an employee of the Committee

1 erroneously posted the face amount of the invoice as a payable which then was
2 mistakenly reported as a debt for \$3,000 on the Form 3, Schedule D, filed for the period
3 ending 12/31/94. In early 1995, the Committee tendered a check to satisfy the invoice
4 which the vendor refused to accept, and although Mr. Terrie demanded full payment of
5 the bill, he never attempted collection through filing a lawsuit or otherwise. You assert
6 that neither your office as campaign counsel nor the Committee has heard from Mr.
7 Terrie on this matter for several years, and the applicable California Statute of Limitations
8 has expired on the claim. You state that no amount of the disputed invoice can be
9 collected by the vendor, and the Committee has no intention of volunteering any further
10 payment in relation to this matter. You characterize the reported \$3,000 Schedule D item,
11 has having been "discharged in substance" that "should be discharged in form."

12 b) *Pacific West Communications*: You explain that this vendor performed certain
13 services connected with the production of a video used in Mr. Calvert's 1996 general
14 election campaign. The \$2,915 indicated on the amended Schedule D were overcharges
15 by Pacific West that were disputed by the Committee because the services for which the
16 amounts were billed were both unauthorized and were defectively performed by the
17 vendor, causing extra cost to the campaign to correct. You state that Pacific West neither
18 contested the Committee's contentions, nor pressed any claim for the disputed amount.
19 The Committee considered that it did not owe the money and that the matter was settled.
20 You explain that meanwhile, the disputed amount had been erroneously reported as a
21 Schedule D debt on the Form 3, filed for the period ending 9/30/96, as an unpaid balance
22 on the original Pacific West invoice, following the resolution of the claim itself. You
23 state that the item has been carried as a Schedule D debt since that time and should be

1 eliminated from further reporting. In addition, the Committee has been informed that
2 Pacific West Communications no longer exists as a business.

3 c) *Gangi Graphics*: You state that Gangi was a vendor associated with Pacific West
4 Communications (see above) that performed certain services connected with production
5 of the same video used in the 1996 general election campaign. The \$2,085 indicated on
6 the amended Schedule D, you explain, was an overcharge by Gangi which the Committee
7 disputed for the same reasons it disputed the above-mentioned amounts charged by
8 Pacific West. Gangi later dropped its claim. The disputed amount, you explain, was also
9 erroneously reported as a Schedule D debt on the Form 3 filed for the period ending
10 9/30/96 after that amount had been withdrawn by the vendor as a claim; therefore, it
11 should not have been reported. The item has also been carried as a Schedule D debt since
12 that time, and you contend that it should be eliminated from further reporting.

13 It is the Committee's view that, given the facts and circumstances set forth above,
14 charging off the foregoing Schedule D items would not be actual discharges of debts,
15 would not create corollary contributions or receipts, could not be accurately reported as
16 Schedule B disbursements, and would not be offsets or rebates. The Committee contends
17 that it is not obligated to pay the subject amounts reported and would not receive any
18 benefits by charging off the items from its records. It further contends that the amounts
19 were in the first instances reported in error and sees no legitimate reason to continue
20 reporting the amounts on any future Schedule D. Finally, you note that the four year

1 California Statute of Limitations, which governs these transactions, has expired for all
2 three matters and whatever potential claim a vendor might make is thereby extinguished.¹

3 You state that the Committee would like to delete the subject amounts and
4 creditor designations from the next Form 3 report, following the approval of an
5 affirmative advisory opinion from the Commission. If this is not permissible, the
6 Committee seeks, in the alternative, an advisory opinion as to how best to charge off the
7 subject items and resolve the reporting issues.

8 **ACT AND COMMISSION REGULATIONS**

9 Each report filed under 11 CFR 104.1 shall, on schedule C or D, as appropriate,
10 disclose the amount and nature of outstanding debts and obligations owed by or to the
11 reporting committee. Where such debts and obligations are settled for less than their
12 reported amount or value, each report filed under 11 CFR 104.1 shall contain a statement
13 as to the circumstances and conditions under which such debts or obligations were
14 extinguished and the amount paid. 2 U.S.C. §434(b)(8) and 11 CFR 104.3(d); *see also* 11
15 CFR 104.11, 116.2(b) and 116.7.

16 Debts and obligations owed by a political committee which remain outstanding
17 shall be continuously reported until extinguished. 11 CFR 104.11(a). If the exact amount
18 of a debt or obligation is not known, the report shall state that the amount reported is an
19 estimate. Once the exact amount is determined, the political committee shall either

¹ Under the California Statute of Limitations, a legal action for obligations arising from a written contract must be brought within four years of the contract breach. See CAL CODE OF CIVIL PROCEDURE § 337 (West 1982). The period for commencing an action for obligations arising out of a oral contract is two years. CAL CODE § 339. According to the materials you provide, the dispute with Fieldworks Development dates from 1994, and the disputes with Gangi Graphics and Pacific West Communications date from March 1996. Whatever the type of contract, the statute of limitations for all three disputes has apparently expired.

1 amend the report(s) containing the estimate or indicate the correct amount on the report
2 for the reporting period in which such amount is determined. 11 CFR 104.11(b).

3 With regard to reporting disputed debts, a political committee shall report a
4 disputed debt in accordance with 11 CFR 104.3(d) and 104.11, if the creditor has
5 provided something of value to the political committee. Until the dispute is resolved, the
6 political committee shall disclose on the appropriate reports any amounts paid to the
7 creditor, any amount the political committee admits it owes and the amount the creditor
8 claims is owed. The political committee may also note on the appropriate reports that the
9 disclosure of the disputed debt does not constitute an admission of liability or a waiver of
10 any claims the political committee may have against the creditor. 11 CFR 116.10(a).

11 **APPLICATION TO PROPOSAL**

12
13 The Commission regulations require the continuous reporting of disputed debts.
14 Since the documentation you provide indicates that demands were made for payment by
15 the three vendors for services rendered the Committee, the Committee was correct in its
16 initial action to report the disputed debts. The documentation you have provided does not
17 indicate an actual resolution of the dispute with any of three vendors. Rather, you have
18 asserted that all three vendors have simply ceased their efforts to obtain payment or never
19 challenged the Committee's contentions after the initial demand for payment was made.
20 In one case the vendor, Pacific West Communications, no longer exists.² The
21 Commission also notes your statement that these claims are now legally barred.³

² Commission regulations address cases where a creditor has gone out of business and no other entity has a right to be paid the (undisputed) amount owed by an ongoing political committee. 11 CFR 116.9(a) and (c).

³ In a past opinion the Commission did not permit the termination of a committee despite the fact that legal action to collect the remaining debts of the committee were barred by a State statute of limitations. The Commission noted that the statute of limitations did not extinguish the underlying claims, only the

1 In these circumstances, the Commission agrees that the Committee is not
2 obligated to indefinitely report these disputed debts. However, before it discontinues its
3 reporting of the three debts, the Committee is obligated to explain the circumstances in its
4 next report, using 11 CFR 104.3(d) and 104.11(a) as guidelines. Therefore, in its next
5 report following the issuance of this opinion, the Committee should file a Schedule D
6 which lists the three disputed debts with Fieldworks Development, Pacific West
7 Communications and Gangi Graphics. It should list an outstanding balance of zero for
8 each debt as of the close of the reporting period. In the column provided to show
9 payments made during the reporting period, the Committee should disclose in parenthesis
10 an amount indicating that each debt is paid in full. To explain its representation that the
11 debts are, in effect, paid, the Committee should include a memo entry which cites this
12 advisory opinion, states the Committee's position that these amounts were disputed with
13 the three vendors, that the vendors have ceased to demand Committee payment, and that
14 the statute of limitations for these debts has expired making collection unenforceable in
15 the legal process. It should also state that the Committee will no longer list the three
16 debts on its Schedule D. After the Committee has taken these steps, it will have no future
17 reporting obligation regarding these three debts.

collection of those claims. See Advisory Opinion 1988-44. Nonetheless, in Advisory Opinion 1990-15, while acknowledging the holding of Advisory Opinion 1988-44, the Commission noted that the expiration of the statute of limitations regarding the collection of a committee's remaining debts was a factor the Commission could consider in a committee's request for administrative termination. Advisory Opinion 1988-44 is distinguishable from your situation since none of the debts there at issue were described as disputed debts.

Enclosures (AOs 1990-15 and 1988-44)

